

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**LOCAL 2, BUILDING SERVICE EMPLOYEES AND
FACTORY WORKERS, UNITED SERVICE WORKERS,
INTERNATIONAL UNION OF JOURNEYMEN AND
ALLIED TRADES**

and

Case No. 29-CB-13071

MURTEZA TOPLICA, An Individual

Nancy Lipin, Esq., Counsel for the General Counsel.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on June 14, 2006 in Brooklyn, New York. The Consolidated Complaint herein, which issued on April 21, 2006, was based upon an unfair labor practice charge that was filed on January 20, 2006 by Murteza Toplica, an Individual. The Complaint alleges that Local 2, Building Service Employees and Factory Workers, United Service Workers, International Union of Journeymen and Allied Trades, herein called the Respondent, refused to file and process a grievance concerning the failure of Seaside Company, LLC, herein called Seaside, Toplica's employer, to provide Toplica with termination pay, which Toplica attempted to file under Articles 10 and 19 of the collective bargaining agreement between Seaside and the Respondent, which agreement is effective for the period May 21, 2004 to May 20, 2007, in violation of Section 8(b)(1)(A) of the Act. On May 2, 2006, after Seaside paid the severance pay to Toplica pursuant to its contract with the Respondent, the Regional Director approved a Settlement Agreement with Seaside in Case No. 29-CA-27386, severed 29-CA-27386 from 29-CB-13071, and withdrew the portions of the Consolidated Complaint pertaining to Case No. 29-CA-27386. Respondent failed to file an Answer to the Complaint herein and did not appear at the hearing. At the hearing, I asked Counsel for the General Counsel what remedy, if any, she was requesting other than the posting of a notice by the Respondent. She responded that the region was requesting that the Respondent be found to be jointly and severally liable for the severance pay with Seaside for the severance payment that Seaside made to Toplica.

In the absence of an Answer to the allegations herein, at the hearing, Counsel for the General Counsel made a Motion for Default Judgment, which I granted. I therefore make the following findings of fact and conclusions of law:

1. The unfair labor practice charge herein was filed by Toplica on January 20, 2006 and served by regular mail upon the Respondent on about January 26, 2006.

2. At all material times, Seaside, a domestic corporation with its principal office and place of business located at 300 West 55th Street, New York, New York, and a place of business located at 20 Father Cappadanno Boulevard, Staten Island, New York, herein called the Staten Island facility, has owned and operated real estate properties.

3. During the past year, which period is representative of its annual operations generally, Seaside, in the course and conduct of its operations described above, derived gross revenue in excess of \$500,000, and purchased and received at the Staten Island facility, products, goods and materials valued in excess of \$5,000 directly from suppliers located within the State of New York, which suppliers, in turn, purchased said products, goods and materials from entities located outside the State of New York.

4. At all material times Seaside has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, Lydia Stewart has held the position of Secretary Treasurer of Respondent and has been an agent thereof acting on its behalf.

7. The following employees of Seaside, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time superintendents, handymen, porters and painters employed by Seaside at the Staten Island facility.

8. At all material times, Respondent has been the designated collective bargaining representative of the Unit. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective from May 21, 2004 to May 20, 2007, covering conditions of employment of the Unit and containing, among other provisions, a grievance and arbitration procedure.

9. At all material times, the Respondent, by virtue of Section 9(a) of the Act, has been the exclusive representative of the Unit, for the purposes of collective bargaining.

10. On or about May 24, 2005, Toplica resigned from his employment at Seaside because of a medical disability.

11. Initially, in about October 2005, Seaside failed to continue in effect all the terms and conditions of the agreement described above by failing to pay Toplica termination pay as required by Article 19 of that agreement.

12. The subject set forth in paragraph 11, relates to the terms and conditions of employment of the Unit and is a mandatory subject for the purpose of collective bargaining.

13. Since about December 2005, Respondent has refused to file and process a grievance concerning Seaside's failure to provide Toplica with termination pay, which Toplica attempted to file under Articles 10 and 19 of the collective bargaining agreement set forth above in paragraph 8.

14. Respondent engaged in the conduct described above in paragraph 13 without offering any reason or basis for its refusal.

15. By engaging in the conduct set forth above in paragraph 13, in connection with its representative status as described above in paragraphs 8 and 9, Respondent has failed to

represent Toplica for reasons that are unfair, arbitrary, invidious, and has breached the fiduciary duty it owes to Toplica and the Unit.

16. By engaging in the conduct described above in paragraphs 13 and 15, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

17. The unfair labor practices of the Respondent as described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist from engaging in those activities and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In addition to posting a Notice herein, Counsel for the General Counsel requested that I find the Respondent to be jointly and severally liable to Toplica for the severance payment that Seaside paid to Toplica. As Seaside has already paid this amount to Toplica, and because I could find no legal precedent for ordering the Respondent to be jointly and severally liable for this payment already made, Counsel for the General Counsel's request for this extraordinary remedy is unwarranted.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Local 2, Building Service Employees and Factory Workers, United Service Workers, International Union of Journeymen And Allied Trades, its officers and agents, shall:

1. Cease and desist from

(a) failing or refusing to represent Murteza Toplica, or any other employee, for reasons that are unfair, arbitrary, invidious, and breach the fiduciary duty owed to Toplica and the unit employees that it represents.

(b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of this Decision, notify Toplica, in writing that it will not fail to represent him fairly, and that it will not fail and refuse to process grievances on behalf of the unit employees that it represents for reasons that are unfair, arbitrary and invidious.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its union office copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 5, 2005

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 27, 2006

Joel P. Biblowitz
Administrative Law Judge

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX**NOTICE TO MEMBERS**

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**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

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WE WILL NOT fail and refuse to represent Murteza Toplica, or any other employee in a unit whose employees we represent, for reasons that are unfair, arbitrary or invidious, or for reasons that breach the duty that we owe to Mr. Toplica or other unit employees.

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WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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**LOCAL 2, BUILDING SERVICE EMPLOYEES
AND FACTORY WORKERS, UNITED SERVICE
WORKERS, INTERNATIONAL UNION OF
JOURNEYMEN AND ALLIED TRADES
(Union)**

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Dated _____ **By** _____
(Representative) **(Title)**

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

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THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.